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ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM  
ANNUAL REPORT 1996-1997

This was a productive year for the Hays Programs and its Fellows and Directors. The 1996-1997 Hays Fellows were: Gregory Chen (Palmer Weber Fellow), Rebekah Diller (Harriet Pilpel-Planned Parenthood Fellow), Eric Fink (Deborah Rachel Linfield Fellow); Manuella Hancock (Tom Stoddard Fellow), Laura Kelly (Roger Baldwin Fellow), and Jennie Pittman (Robert Marshall Fellow). Kathryn Graham, an Australian civil liberties lawyer and a Hauser Global Scholar at NYU, participated actively in our meetings this year and has been added to the roster of Hays Fellows.

The death of Tom Stoddard, Hays Fellow 1976-1977, was a terrible loss. Tom was a wonderfully effective advocate, valued colleague, and friend. We will miss him terribly. As an indication of the esteem in which Tom was held, a large number of people, including many Hays Fellows, made contributions to the Stoddard Fellowship in the Hays Program.

We continued our series of informal evenings at which former Fellows discussed their backgrounds, aspirations, successes and disappointments in civil liberties work, and their recollections of their years as Hays Fellows. In the fall we met with Alan Houseman, Hays/Field Fellow 1967-1968 and longtime director of the Center for Law and Social Policy in Washington, D.C. Since his year as a Hays Fellow, Alan has worked steadily on behalf of poor people, especially to promote effective legal services for them. He formerly directed the law reform unit of Michigan Legal Services and worked as Director of Research at the Legal Services Corporation. At our meeting, he commented on congressional battles over legal services and welfare, and the current state of the poverty law movement (not good). He also vividly described his family vacations in the remote mountains of Colorado.

In the spring we met with Judith Resnik, Hays Fellow 1974-1975. The Orrin B. Evans Professor at the University of Southern California Law School, Judith was a Visiting Professor at NYU last academic year. She is a leading scholar on civil procedure and has been a major force in encouraging federal courts to examine sex discrimination in the administration of justice. At our meeting

she described career choices that were the result of her commitment to social goals, aided by special friends and good luck. Judith declined an offer to join NYU permanently and will become a chaired professor at the Yale Law School this fall. We regret that Judith will not be down the hall from us but are proud of her prestigious new appointment.

In May we held a farewell dinner for the graduating Fellows and their supervising attorneys. Steve Shapiro, legal director of the ACLU, gave an incisive analysis of the current map of civil liberties, and Marcia Ann Lowry, executive director of Advocates for Children (and Hays Fellow 1968-1969) described the highlights of her three decades of legal work on behalf of children.

### THE WORK OF THE FELLOWS

The heart of the Hays Program is the work of the Fellows. They again interned with many leading advocates for civil liberties, to all of whom we are deeply grateful for their contribution to the Program. At our regular meetings, each Fellow and his or her supervising attorneys, led a discussion of a current civil liberties case on which they collaborated.

This year the Fellows worked on a wide range of issues: racial discrimination, free expression, voting rights, discrimination against people with disabilities, death penalty, domestic violence, foster care, prison conditions, and reproductive freedom. A summary follows.

#### Racial discrimination.

In the fall semester Eric Fink worked under the supervision of attorneys Norman Chachkin (Hays Fellow, 1966-1967) and Jackie Berrian of the NAACP Legal Defense & Educational Fund, Inc., on a voting rights case, Cannon v. North Carolina State Bd. of Educ. The case involved a challenge to a recently-implemented districting plan for elections to the board of education for the newly consolidated city and county public school system in Durham, North Carolina. The plan created a system designed to satisfy traditional districting principles while building a sense of attachment to the new school system among voters and ensuring a racially balanced school board. NAACP-LDF represented two local civil rights organizations, the Durham Committee for the Affairs of Black People and the Durham People's Alliance, which intervened in defense of the plan against allegations that the plan discriminated against white voters in violation of § 2 of the Voting Rights Act, constituted racial gerrymandering prohibited under Shaw v. Reno, and diluted white votes in violation of the Fourteenth Amendment.

Eric travelled to Durham to collect data on racial voting patterns in Durham, maps of the school board election districts, voting precincts, and former city and county school system boundaries, and other material relating to the school board election plan. NAACP-LDEF's expert witnesses used this material to prepare reports refuting the plaintiffs' vote dilution and gerrymandering claims. Eric also assisted in the research and drafting of NAACP-LDF's brief in support of defendants' motion for summary judgment. In March, the court granted that motion and dismissed the case in its entirety. Cannon v. North Carolina Bd. of Educ.

#### Free expression.

Manuella Hancock worked with Koob & Magoolaghan, a small firm with a civil rights practice. Manuella helped to develop legal and factual claims on behalf of Latino immigrant day laborers in Mount Kisco, New York, that the town pursued a policy of harassing the workers, arresting them for congregating on the streets, searching their homes at night without reasonable grounds, and generally pressuring them to leave town. Manuella researched and wrote a section of a brief relating to First Amendment claims. She also drafted a complaint on Fourth Amendment grounds and interviewed witnesses and victims.

#### Voting rights.

In the spring semester, Eric Fink worked at NYU's Brennan Center for Justice at on its Democracy Project. He prepared a comprehensive survey of constitutional challenges to state ballot access restrictions that impair the rights to cast an effective vote and to associate for the advancement of political beliefs, protected under the First and Fourteenth Amendments. Reviewing more than one hundred judicial opinions spanning nearly thirty years, Eric traced the evolution of Supreme Court doctrine and its application and extension by state and federal courts across the country.

Eric also participated in the Brennan Center's efforts on behalf of campaign finance reform. For a mock Supreme Court argument in a case calling for the overruling of Buckley v. Valeo, Eric edited a bench memorandum which analyzed the relevant case law and the competing arguments on Buckley's equation of money with speech. He also provided logistical support for a debate, held at NYU Law School, on the proposition: "Resolved: Buckley v. Valeo Should Be Overruled," and he researched Wisconsin administrative procedure law for a brief submitted by the Brennan Center in support of a state senate candidate's lawsuit, under Wisconsin's campaign finance law, seeking to restrain corporate campaign expenditures in his race.

### People with Disabilities.

Rebekah Diller worked in the fall semester with the Legal Aid Society's Civil Appeals and Law Reform Unit on Rivera v. New York City Housing Authority, a federal class-action lawsuit brought by mobility-impaired tenants in public housing whose disabilities had not been accommodated by the Americans with Disabilities Act and Rehabilitation Act. NYCHA had failed for years to accommodate these tenants with transfers to accessible apartments, modifications to their existing apartments, and the installation of ramps and widened doorways. Focusing on the summary judgment stage of the case, she participated in strategy sessions and brief writing. Rebecca reports, "From this experience in class action litigation, I learned about civil rights actions, particularly how to demonstrate systemic violations from complicated factual circumstances involving thousands of plaintiffs with various injuries."

### Death penalty.

In the fall of 1996, Laura Kelly worked with Art Eisenberg at the New York Civil Liberties Union on Martinez v. Pataki. Martinez and other Bronx voters challenged Governor Pataki's removal of Bronx D.A. Robert Johnson from the prosecution of three defendants charged with the murder of a police officer. Claiming that Johnson had expressed an unwillingness ever to seek the death penalty, the Governor relied on the "take care" clause of the New York Constitution, which provides that the Governor shall "take care that the laws be faithfully executed," as his source of authority. Bronx Supreme Court Justice Howard R. Silver granted respondents' motion to dismiss on the ground that the controversy was nonjusticiable. Laura's research for the reply brief in the Appellate Division, Second Department, on the federal "take care" clause helped to lay the ground for an argument that the New York clause, like the federal clause, should be interpreted to allow the Governor to remove only purely executive officials. The First Department upheld the Supreme Court's decision on justiciability grounds. Martinez v. Pataki.

### Domestic violence.

In the spring of 1997 Laura Kelly worked at the Legal Aid Society, Criminal Appeals Bureau, with Sara Bennett, who handles many criminal appeals on behalf of battered women. Laura prepared a CPL §440.10 motion for a new trial on ineffective assistance of counsel grounds, claiming that the client had been represented by an attorney with little or no trial or criminal experience who demonstrated unfamiliarity with evidentiary rules. Although the attorney knew that his client was battered by the deceased, he failed to explore a defense related to the abuse and the client was

convicted of second degree murder and sentenced to twenty-five years to life. Laura worked on all aspects of the motion for a new trial: legal research, investigation, a client interview, and drafting portions of the statement of facts and legal argument. We received an unsolicited letter from Laura's supervisor, Sara Bennett, saying: "I was extremely impressed with Laura's work. She was thorough and self-motivated, but most importantly, she was able to turn her initial draft into such excellent work that I was virtually able to paste it right into my papers. When I was cajoled into supervising a student this semester by one of my colleagues, I never expected to work with someone of such high caliber as Laura."

#### Foster care.

Greg Chen worked with Marcia Lowry, Hays Fellow 1968-1969, and others at Children's Rights, Inc., on Marisol v. Guigliani, CRI's most recent class action lawsuit against the New York City child welfare system. The case seeks to document the plight of abused and neglected children and to force the City to account for its failings. Greg helped to document the history of the New York child welfare system and assisted staff attorney Craig Levine, NYU '91, in researching the legal standards that the New York system must meet. Marisol is scheduled for trial in the fall of 1997.

#### Prison conditions.

In the spring, Rebekah Diller worked with Prisoner's Legal Services of New York investigating health care and disciplinary conditions at two women's prisons--Bedford Hills and Taconic Correctional Facilities. She interviewed prisoners who had written for assistance because they were abused by guards, were undergoing disciplinary actions, and were facing a variety of other problems. She handled the case of a pregnant prisoner who had received substandard medical care from a prison doctor. She also worked on the case of a mentally ill inmate who had been in Bedford Hills' Special Housing Unit (solitary confinement) for much of her time in prison. Rebekah's concern was that this punitive confinement was a result of her untreated mental illness. She appealed several disciplinary proceedings against the client and wrote to the prison's superintendent in an effort to have her moved out of solitary confinement to a location where she could receive the care she required. Rebekah reports, "The work I did on behalf of this client allowed me to see a case throughout its entire phase of factual development and may form the basis for future litigation concerning the treatment of mentally ill prisoners at Bedford Hills."

During the fall of 1996, Jennie M. Pittman worked at Koob & Magoolaghan on D'Angelo v. City of New York, a case involving the

death of a Rikers Island inmate at the prison psychiatric ward of Elmhurst Hospital in August 1982, as a result of being restrained in a hot, unvented room and being given high doses of psychotropic medication. She did factual investigation and organized findings to prepare for depositions. She reports, "Examining fifteen-year-old medical records to reconstruct key events, identifying critical missing information and considering how it might be discovered, and attempting to locate possible witnesses gave me invaluable insight into how successful attorneys organize facts in order to develop a case. Moreover, assisting at depositions enhanced my understanding of when adhering strictly to a deposition plan is necessary and when deviating from it may be wise. Overall, interning at Koob & Magoolaghan dramatically increased my interest in litigating prisoners' rights issues."

#### Reproductive freedom.

During the spring of 1997, Jennie Pittman interned at the ACLU's Reproductive Freedom Project. She did legal research and wrote a memorandum on constitutional challenges to restrictions on access to, and funding for, abortions for prison inmates. Intended to assist ACLU affiliates in advising attorneys who must act quickly on behalf of indigent clients desiring abortions, the memorandum provides an overview of current law and briefs key arguments. (1) the government is in violation of the Fourteenth Amendment when it restricts access to, and funding for, abortion services for women in custody without a legitimate penological justification, and the government fails to provide women in custody with a medical care system that meets minimal standards under the Eighth Amendment when it limits or denies access to, and funding for, the medical procedures necessary for terminating pregnancy.

#### International Human Rights

Kathryn Graham, our honorary Hays Fellow, led a discussion at a Hays seminar on a case in which she had been involved in Australia. Toonen v. Australia asked the United Nations Human Rights Committee to consider whether a state law prohibiting consensual sex between two people of the same sex violated an international human rights treaty guaranteeing the right to privacy. The Committee ruling to this effect resulted in the revocation of the last anti-sodomy statute in an Australian state. The United States is a party to this treaty.

#### THE DIRECTORS

Norman Dorsen was on sabbatical during 1996-1997, but his efforts on behalf of the Hays Program were not diminished. He also continued his service with several public interest organizations,

primarily the Lawyers Committee for Human Rights, where he chairs the board of directors. Among Norman's other active affiliations are the Thomas Jefferson Center for the Protection of Free Expression and Planned Parenthood International (Western Hemisphere Division). He was also elected the first president of the U.S. Association of Constitutional Law. His travels for various groups took him to England, Finland, Hungary and India.

As previously reported, Norman chaired the committee that planned NYU's Global Law School Program. After the program was approved, he directed it until early 1996, when he became faculty chair as well as chair of the committee that recommends foreign law professors to the faculty. Norman also continued to head the James Madison lecture series in which federal appellate judges address a constitutional law topic; last year's lecturer was Chief Judge Richard Arnold of the U.S. Court of Appeals for the 8th Circuit. He also organized an NYU faculty financial contribution to a distinguished professorship being established in honor of the late Haywood Burns at CUNY Law School, where Haywood was formerly dean.

In line with his new international human rights interests, Norman published an article in an ACLU journal discussing how human rights treaties and norms can be used profitably in domestic litigation. He also completed a longer piece, Civil Liberties, National Security and Human Rights Treaties, to appear in the University of California at Davis Journal of International Law and Politics. And he wrote the introduction to the new edition of the Society of American Law Teacher's book, Looking at Law School, edited by NYU law professor Stephen Gillers, Hays/Field Fellow, 1967-1968.

Norman completed his work as general editor of the ACLU's handbook series. The Rights of Families by NYU law professor Marty Guggenheim (former Hays Fellow 1970-1971) and several other books are at press, including The Rights of Poor People, by NYU law professor Helen Hershkoff and Stephen Loffredo. After more than 25 years as editor of the series, which produced 40 titles, Norman handed the reins to Professor Eve Cary of Brooklyn Law School, a longtime civil libertarian and spouse of Richard Greenberg, Hays/Field Fellow 1968-1969.

Sylvia A. Law also had a busy year. In September, she organized an emergency meeting in Chicago, for the Society of American Law Teachers (SALT), on developing strategies on affirmative action. In October, she led a Hays Program conference, funded by the Rockefeller Foundation, in Bellagio, Italy, on international perspectives on access to contraception. The NYU Review of Law and Social Change is publishing the papers generated by this conference. In December, she filed a brief on behalf of women's organizations in support of the claims of terminally ill patients who seek physician comfort and assistance in dying. In January she traveled to Viet Nam where she spent most of two weeks

visiting mental institutions in Hanoi and Ho Chi Min City, talking about mental illness, reproductive health, and retardation. In April, Sylvia helped SALT sponsor a conference on affirmative action, at CUNY Law School, dedicated to Haywood Burns.

Sylvia co-authored a new edition of her case book, Law and the American Health Care System (Foundation Press, 1997). She also published an analysis of current debates about welfare, "Ending Welfare as We Know It," 49 Stan. L. Rev. 471 (1997). Finally she contributed a chapter to the new edition of the Society of American Law Teacher's book, Looking at Law School.

In May Sylvia was honored as A Woman of Power and Influence by the New York State Chapter of the National Organization of Women. In addition Antioch College, her alma mater, gave her its highest honor, the Horace Mann Award. Mann, the founder of public education in the United States and of Antioch, the first college in the United States to admit both women and African Americans, is known for his injunction, "Be ashamed to die until you have done some good for humanity." Sylvia came home sporting a popular campus T-shirt that says, "Antioch College: Boot Camp for Revolution."

#### THE FUTURE.

Jennie Pittman will join the ACLU National Prison Project in the fall of 1997. Greg Chen is returning to California to clerk with Judge Stephen Reinhardt of the U.S. Circuit Court of Appeals for the Ninth Circuit. Eric Fink will be practicing with a small labor law firm in Philadelphia. Manuella Hancock will be practicing public interest law in California or New York. Rebekah Diller will be clerking for Dolores Sloviter, chief judge of the U.S. Court of Appeals for the Third Circuit, and Laura Kelly will be clerking for Judge Sidney Stein of the U.S. District Court, Southern District of New York. Kathryn Graham will be staying at NYU Law for another year, to engage in research preparatory to seeking a law teaching post in Australia and to work parttime in the School's Global Law School Program.

The 1997-1998 Fellows will be Kim Barry (Harriet Pilpel-Planned Parenthood Fellow), Anne Pearson (Robert Marshall Fellow), Sonya Rudenstine (Palmer Weber Fellow), Pamela Sah (Tom Stoddard Fellow), Craig Siegel (Roger Baldwin Fellow), and Steven Ury (Reed Foundation Fellow). We received interviewing help and wise judgment in selecting these Fellows from Michael Rothenberg, Hays Fellow 1990-1991, then director of the Vera Institute's jury service program and now associate director of New York Lawyers for the Public Interest, and Natalie Gomez-Velez, Hays Fellow 1988-1989 and currently an Acting Clinical Law Professor at NYU.



ADMINISTRATION

In closing, we express our appreciation for the strong support we have received from the Law School administration, from the indefatigable Evelyn Palmquist, the Program's secretary and administrative assistant, and from the numerous individuals and foundations who have provided financial support. We have made further strides to endow the Deborah Rachel Linfield Fellowship for work on freedom of the press, and we hope next year to be able to announce that it is fully funded. Above all, we are grateful to the scores of former Hays Fellows who have remained in close touch with the Program and assisted us as we continue to build a strong civil liberties community at and beyond Washington Square.

Norman Dorsen  
Sylvia A. Law

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